

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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STATE OF OKLAHOMA, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-PJC
	)	
TYSON FOODS, INC., <i>et al.</i>	)	
	)	
Defendants.	)	

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**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS IN  
LIMINE PERTAINING TO ALTERNATE SOURCES OF PHOSPHORUS AND  
BACTERIA TO THE IRW [Dkt. No. 2436] AND BACTERIAL OR PHOSPHORUS  
LEVELS IN OTHER WATERSHEDS [Dkt. No. 2411]**

EXHIBIT 1  
Transcript of July 28, 2009 Hearing

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, )  
W.A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA, )  
et al. )

Plaintiffs, )

vs. )

CASE NO. 05-CV-329-GKF-PJC

TYSON FOODS, INC., et al., )

Defendants. )

TRANSCRIPT OF PROCEEDINGS  
JULY 28, 2009  
BEFORE THE HONORABLE GREGORY K. FRIZZELL, DISTRICT JUDGE  
MOTION HEARING, VOLUME I

APPEARANCES:

For the Plaintiffs:

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1 the above.

2           Plaintiff did not study the fate and transport  
3 characteristics -- or, rather, Dr. Harwood -- of the bacterium  
4 or any other bacterium in the IRW.

5           Given the alternate sources for fecal indicator  
6 bacteria and potential alternate sources of the biomarker, the  
7 assumption that the correlation is maintained from chicken  
8 house to recreational waters is unreliable.

9           Number three -- or -- and related thereto.

10           Number three. The theory is not substantiated by  
11 traditional fate and transport study. The bacterium --  
12 specifically that the bacterium moves in the environment at the  
13 same speed as fecal bacteria in poultry waste. Thus,  
14 Dr. Harwood fails to analyze whether the fecal bacteria found  
15 in conjunction moved together with the brevibacterium from  
16 poultry litter or were from other sources.

17           Number four. The poultry-specific biomarker is not  
18 specific to poultry. Plaintiffs found the same genetic  
19 sequences in geese and ducks. They found it in every bird  
20 species they tested.

21           Dr. Harwood does not yet know whether her DNA  
22 sequence is carried by other species of brevibacteria or other  
23 types of bacteria found in the IRW or how many other species in  
24 the IRW carry the bacteria.

25           Dr. Myoda isolated the biomarker in other materials: